88-501

No. _____

Supreme Court, U.S.
FILED
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

C. MICHAEL LEIGH,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

HOWARD J. SHIFKE, ESQUIRE
ANTHONY F. GONZALEZ, ESQUIRE
(Counsel of Record)
ANTHONY F. GONZALEZ, P. A.
701 N. Franklin Street
Tampa, Florida 33602
(813) 224-0431

Counsel for Petitioner

September 19, 1988

QUESTION PRESENTED

WHETHER THE COURT OF APPEALS DENIED PETITIONER'S SIXTH AMENDMENT RIGHT TO COUNSEL WHEN IT DISMISSED PETITIONER'S APPEAL BASED UPON AN *ANDERS* BRIEF FILED BY COURT-APPOINTED COUNSEL AND THEN REFUSED TO REINSTATE THE APPEAL SO THAT PRIVATELY RETAINED COUNSEL COULD VIGOROUSLY ADVOCATE PETITIONER'S APPELLATE ISSUES?

PARTIES BELOW

United States of America

C. Michael Leigh

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

NO. _____

C. MICHAEL LEIGH,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

C. MICHAEL LEIGH petitions for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit in this cause.

OPINION BELOW

The decision of the Court of Appeals (Appendix A, infra) is not officially reported at this time.

JURISDICTION

The Court of Appeals dismissed Petitioner's appeal and a timely motion for rehearing was denied on July 21, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves 28 U.S.C. §1291 and the Sixth Amendment to the United States Constitution.

STATEMENT OF THE CASE

On November 20, 1986, Petitioner was indicted on one count of defrauding an individual by having the individual travel through interstate commerce for the purpose of a fraudulent scheme, and eleven counts of defrauding individuals or corporations and using the United States mail as an avenue of the fraud.

On April 7, 1987, Petitioner was found guilty on ten of the twelve counts. He received judgments of acquittal as to counts 4 and 12 of the indictment. Petitioner was sentenced on May 8, 1987 to three consecutive five year sentences and seven five year terms of probation to run concurrent with each other but consecutive to imprisonment. Also, Petitioner was ordered to pay restitution of $27,320 by his fourth year of probation.

Court-appointed trial counsel filed a timely notice of appeal and was court-appointed to pursue Petitioner's appeal. On October 12, 1987, court-appointed appellate counsel filed an *Anders* brief and withdrew from the case.

Petitioner was unsuccessful in acquiring other court-appointed counsel to advocate his appellate issues. Finally, Petitioner's family retained private counsel to pursue the appeal.

Private counsel filed a motion with the Court of Appeals to permit further briefing of the appeal, but on May 31, 1988, the Court of Appeals dismissed the appeal.

Private counsel filed a motion for rehearing to reinstate the appeal for briefing, and on July 21, 1988, the Court of Appeals denied a rehearing.

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS DENIED PETITIONER'S SIXTH AMENDMENT RIGHT TO COUNSEL WHEN IT DISMISSED PETITIONER'S APPEAL BASED UPON AN *ANDERS* BRIEF FILED BY COURT-APPOINTED COUNSEL AND THEN REFUSED TO REINSTATE THE APPEAL SO THAT PRIVATELY RETAINED COUNSEL COULD VIGOROUSLY ADVOCATE PETITIONER'S APPELLATE ISSUES.

The law is clear that there is no constitutional right to an appeal. However, as this Court has held, "[t]he right of appeal, as we presently know it in criminal cases, is purely a creature of statute...." *Abney v. United States,* 431 U.S. 651, 656, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977).

The statute applicable to this case is 28 U.S.C. §1291, which in pertinent part states, "[t]he Courts of Appeals ... shall have jurisdiction of appeals from all final decisions of the district courts of the United States...." Petitioner's case was appealed to the United States Court of Appeals for the Eleventh Circuit and he was represented by court-appointed counsel.

Petitioner's court-appointed counsel filed an *Anders* brief and withdrew from the appeal. Petitioner was then prohibited from having private counsel vigorously pursue Petitioner's appellate issues. The Court of Appeals accepted Petitioner's appeal, but denied him the right to effective appellate counsel when it dismissed the appeal and refused to reinstate it.

Court-appointed appellate counsel relied upon *Anders v. California,* 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), when he presented but failed to advocate any appellate issues and withdrew from the appeal. This Court has stated, "Anders recognized that the role of the advocate 'requires that he support his client's appeal to the best of his ability.' " (citation omitted) *Jones v. Barnes,* 463 U.S. 745, 754, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983).

Moreover, the Sixth Amendment to the United States constitution provides that criminal defendants shall have a right to counsel. The right to counsel includes "having the appellate advocate examine the record with a view to selecting the most promising issues for review." *Jones v. Barnes,* 463 U.S. at 752.

An examination of what occurred in the Court of Appeals shows that Petitioner was denied his right to appellate counsel. Court-appointed appellate counsel raised two possible issues for appeal: insufficiency of the evidence and the denial of a motion for bill of particulars. (Appendix C, infra).

On sufficiency of the evidence, the *Anders* brief offers limited facts about the trial testimony and documents in a neutral manner and then states that the jury probably did not believe Petitioner when he testified. Court-appointed appellate counsel failed to comb the record wherein he could have shown that the case never should have gone to the jury.

Secondly, after noting that Petitioner did not need to show prejudice to the defense of his case due to a denial of a motion for bill of particulars, court-appointed appellate counsel failed to advocate a reversal and failed to articulate whether or not there was prejudice.

Petitioner, upon realizing that no appellate issues would be advocated on his behalf, moved for another court-appointed attorney. After the Court of Appeals denied the motion, Petitioner convinced his family that he needed private counsel to actively advocate his appeal.

Private counsel examined the trial record and felt that the two issues raised by court-appointed counsel were non-frivolous, and also, that there were possibly one or two evidentiary issues ripe for appeal. Private counsel took on representation of Petitioner and filed a notice of appearance (Appendix D, infra) and a motion to brief appeal (Appendix E, infra).

The Court of Appeals dismissed the appeal and private counsel filed a motion to reinstate appeal (Appendix F, infra), which was treated as a timely motion for rehearing and was denied.

The Court of Appeals denied Petitioner his right to effective assistance of appellate counsel because it opted to dismiss Petitioner's appeal rather than allow Petitioner to vigorously advocate his assignments of error. The Court of Appeals' actions are the functional equivalent of denying Petitioner his right to appeal, and his Sixth Amendment right to counsel.

CONCLUSION

Based upon the foregoing arguments and authorities, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

HOWARD J. SHIFKE, ESQUIRE
ANTHONY F. GONZALEZ, ESQUIRE
(Counsel of Record)
ANTHONY F. GONZALEZ, P. A.
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APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

NO. 87-3333

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus
C. MICHAEL LEIGH,
Defendant-Appellant.

On Appeal from the United States District Court for the Middle District of Florida

---

Before: VANCE, HATCHETT and ANDERSON, Circuit Judges.

PER CURIAM:

Appellant's "motion for rehearing" construed as a motion to reconsider this court's 4/20/88 order granting withdrawal of counsel and denying reappointment of counsel is DENIED.

The appeal is DISMISSED as frivolous.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 87-3333

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus
C. MICHAEL LEIGH,
Defendant-Appellant.

On Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING
(July 21, 1988)

Before: VANCE, HATCHETT and ANDERSON, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellant, C. Michael Leigh, is denied.

ENTERED FOR THE COURT:
Joseph W. Hatchett
United States Circuit Judge

ORD-41

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 87-3333

UNITED STATES OF AMERICA,
Appellee
v.
C. MICHAEL LEIGH,
Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

BRIEF FOR THE APPELLANT

CRIMINAL CASE

JOHN S. CROMPTON, ESQUIRE
4105 North Himes Avenue
Tampa, Florida 33607
(813) 874-0437

CERTIFICATE OF INTERESTED PERSONS

Trial Judge: The Honorable Elizabeth A. Kovachevich.
Assistant United States Attorney: Warren Zimmerman, Esquire.
Defense Counsel: John S. Crompton, Esquire.
Victims of the Crimes Alleged in the Indictment:

James Maddux
James L. Newlan
Arlo Burns
Kenneth C. Gonzalez
Philip Baker
Charles Barcus
Joe Besecker
Rolland Braun
Eugene Bulso
Thomas Cono
Frank Morettini
Robert Melling
Russell Wolfe
Gerald Krehl
John Newcomer
Mark Price
Stanford Kastner
Robert Archer
Gary Gunnoe
Zane Pic

STATEMENT REGARDING PREFERENCE

Since this is a criminal case, AND THE DEFENDANT IS INCARCERATED, it is entitled to be given preference in the processing and disposition pursuant to 11th Cir. R. 12; Appendix One, (a)(2) Criminal Case.

STATEMENT REGARDING ORAL ARGUMENT

Appellant suggests that this case may be submitted for decision on the briefs.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 87-3333

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

C. MICHAEL LEIGH,
Defendant-Appellant.

STATEMENT OF THE ISSUES

I

DID THE TRIAL COURT COMMIT REVERSIBLE ERROR BY FAILING TO HOLD AS A MATTER OF LAW THAT THERE WAS INSUFFICIENT EVIDENCE ADDUCED AT TRIAL TO WARRANT SUBMISSION OF THE CASE TO THE JURY AND THE SUBSEQUENT FINDING OF GUILT ON TEN OF THE TWELVE COUNTS IN THE INDICTMENT?

II

DID THE TRIAL COURT, THROUGH ORDER OF THE MAGISTRATE, COMMIT REVERSIBLE ERROR BY DENYING DEFENDANT'S MOTION FOR BILL OF PARTICULARS?

PRELIMINARY STATEMENT

Undersigned counsel, who additionally acted as defendant's trial counsel, has thoroughly reviewed the record on appeal, including the entire trial transcript. Based on this diligent review, counsel is unable to argue that the trial court committed reversible error and that there exists meritorious grounds for an appeal. Pursuant to *Anders v. State of California,* 386 U.S. 747 (1967), *Ellis v. United States,* 356 U.S. 674 (1958) and *Johnson*

v. United States, 360 F.2d 844 (D.C. Cir. 1966), counsel suggests that the following issues are arguable, but for the reasons cited are not meritorious.

STATEMENT OF THE CASE

(i) *Course of proceedings and disposition in court below.*

On November 20, 1986, a federal grand jury for the Middle District of Florida, sitting in Tampa, returned a twelve count indictment charging defendant, C. Michael Leigh, with eleven counts of defrauding individuals or corporations and in so doing using the United States mail in violation of Title 18, United States Code, Sections 1341 and 1342, and one count of defrauding an individual while inducing him to travel and be transported in interstate commerce for the purpose of executing the fraudulent scheme in violation of Title 18 United States Code, Section 2314 (Count Twelve). (R. 1).

On December 8, 1986, undersigned counsel John S. Crompton was appointed pursuant to the Criminal Justice Act to represent defendant and on the same day, he was arraigned and entered a plea of not guilty to all charges. (R. 12, 14).

On January 21, 1987, defendant filed motions for disclosure of confidential informants, disclosure of similar acts and supporting memorandum, production and disclosure of favorable and impeaching information and supporting memorandum, and for bill of particulars and memorandum. (R. 26-29). On February 24, 1987 the magistrate issued an order regarding defendant's discovery motions which, among other rulings, completely denied defendant's motion for bill of particulars and memorandum. (R. 36).

On March 24, 1987 trial commenced and continued through April 7, 1987 when the jury returned a verdict of guilty as to Counts 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11, and a verdict of not guilty as to Count 12. (R. 39, 51). Judgments of acquittal were granted for defendant as to Count 4 at the close of the State's case (R. 52) and after the rendition of the jury's verdict as to Count 12. (R. 53).

On May 8, 1987 defendant was sentenced to three consecutive five year terms of imprisonment followed by a five year period of probation. (R. 57). Notice of appeal was entered on that same date and this appeal now follows.

(ii) *Statement of the facts.*

The charges against the defendant allege that the defendant operated a mortgage brokering business and from July of 1981, through March, 1982 the defendant solicited business through various forms of advertisement and when responses to same were made, the defendant would encourage these individuals to pay him money on the promise that he would use or make best efforts to obtain lending monies for their various proposed business enterprises. It is further alleged that defendant would accept the money from these individuals and then fail to make any efforts or, in fact, fail to obtain the financing as requested. The defendant would also make various oral representations and assurances to encourage the prospective borrower and then not follow through on same. (T. 1-26-38). This pattern was realleged in all the counts and in each count an actual mailing was alleged. Count 12 further alleged that defendant induced one Charles Barcus to move or travel in interstate commerce to solicit this type of scheme. (Tr. March 30, 1987 16, 17).

Defendant essentially admitted that he had conducted all transactions that were presented by the government, but maintained that he did not intend to defraud anyone. Defendant claims that the economy was particularly difficult in this time frame and that although he attempted to make arrangements on the various loans requested he met with no success. He further denied making any false or fraudulant oral representations in the course of his business. (Tr. April 2, 1987 58-63).

(iii) *Statement of the standard or scope of review.*

In determining sufficiency of the evidence, the evidence should be viewed in a light most favorable to the Government, *Glasser v. United States,* 315 U.S. 60, 62 S.Ct. 957, 86 L.Ed. 680 (1942). *United States v. Bell,* 687 F.2d 547, (5th Cir. 1983)

holds that it is not necessary to exclude every hypothesis of innocence, but there must be a basis for the reasonable trier of fact to establish guilt beyond a reasonable doubt.

A bill of particulars is necessary pursuant to Rule 7(f), F.R.Cr.P., when the defendant would otherwise be left uninformed of the exact nature of charges against him and cannot properly prepare his defense, avoid prejudicial surprise at trial or effectively plead his conviction or acquittal in bar of prosecution for the same offense charged. *United States v. Colson,* 652 F.2d 1389, 1391 (11th Cir. 1981); *United States v. Cuesta,* 597 F.2d 903, 920 (5th Cir. 1979). It is not necessary to show proof of prejudicial surprise or deprivation of meaningful opportunities for defense preparation. *United States v. Thevis,* 474 F.Supp. 177, 124 (N.D. Ga. 1979), affirmed, 665 F.2d 616 (5th Cir. 1982).

The core of these decisions rests upon the fact that during the pretrial phase it is unknown to the defendant whether sufficient material has been provided to him. It is sufficient, therefore, that he only show a logical probability of difficulty if the bill of particulars is not granted. *Id.*

Where the interests of the defense and the prosecution are closely balanced, the Court must exercise its discretion in favor of disclosure to the Defendant. *United States v. Manetti,* 323 F.Supp. 683, 697 (D.C. Del. 1971).

SUMMARY OF THE ARGUMENT

I

Arguably, there was insufficient evidence to sustain conviction where some mailings of articles were not actually introduced as exhibits and no evidence demonstrating actual words or documents from the defendant attempting to recite statements of fraudulent intent.

II

Arguably, defendant was denied his Sixth Amendment right

to confront his accusors and adequately prepare his defense in that the indictment alone did not place him on sufficient notice as to enough specific facts or allegations that would allow him to properly prepare a defense and therefore, defendant's motion for bill of particulars should have been granted.

STATEMENT OF JURISDICTION

Title 28 U.S.C. Section 1291 provides that the courts of appeal shall have jurisdiction of appeals from all final decisions of the district courts of the United States except where a direct review may be had in the Supreme Court.

ARGUMENT

I

DID THE TRIAL COURT COMMIT REVERSIBLE ERROR BY FAILING TO HOLD AS A MATTER OF LAW THAT THERE WAS INSUFFICIENT EVIDENCE ADDUCED AT TRIAL TO WARRANT SUBMISSION OF THE CASE TO THE JURY AND THE SUBSEQUENT FINDING OF GUILT ON TEN OF THE TWELVE COUNTS IN THE INDICTMENT?

The Government rested its principal theory of prosecution on the facts that defendant failed to obtain loans for which he promised he would make best efforts to obtain. The Government further alleged that not only did defendant not obtain these loans, but he in fact made no effort to do so and did not intend to do so when he took initial down payments on them. To demonstrate this scheme the Government offered various copies of executed contracts drawn by defendant which were signed by the various victims. (Tr. March 24, 1987 p. 34); (Tr. March 25, 1987 p. 12); (Tr. March 25, 1987 p. 113); (Tr. March 25, 1987 p. 136); (Tr. March 26, 1987 p. 30); (Tr. March 26, 1987 p. 68).

One particular contract and commitment form tendered by defendant to an alleged victim did not include the "best efforts" language that the other contracts did. This was the commitment

letter issued to Barcus-Elsworth Properties which was corrected by Barcus-Elsworth Properties and eventually signed and executed in its new form without the best efforts language. (Tr. March 30, 1987, p. 24). The effects and differences of this particular commitment letter are, however, for purposes of this appeal, irrelevant in that the jury found the defendant not guilty of the allegations pertaining to this particular agreement and alleged victim.

Therefore, all of the alleged victims in this case signed contracts with the defendant wherein it was stated that defendant would use "best efforts" to procure mortgage money for them for their business projects. The best efforts language taken in the context of the various exhibits would seem to make anyone realize that there was no guarantee that the monies would necessarily be obtained, particularly people in the business world who were the various victims as stated in this indictment. Arguably, the trial judge should not have allowed the jury to guess and draw the further inference that there was fraudulent intent in the face of these documents. There was, however, testimony from the various victims that oral representations that were more in the nature of a guarantee accompanied these various commitment letters.

In Count 5 of the indictment and again in County 8 of the indictment it was alleged that the defendant used the United States mail to further his fraudulent scheme. In both of these stated counts, however, no actual mailings were introduced into evidence. A lack of any actual exhibit contained in the record could, arguably, have required the trial judge to direct verdicts in favor of the defendant on these two counts.

The defendant offered testimony and evidence that he had made test efforts to obtain lenders for the various propositions but was unable to do so. Various lenders were contacted. (Tr. April 2, 1987, p. 73).

While acknowledging that he was optimistic about some particular loans, the defendant denied giving outright guarantees. (Tr. April 2, 1987, p. 79, as example).

Defendant further stated that he sought legal advice on the validity of the contract form he was using and relied on that advice. (Tr. April 2, 1987, p. 105-107).

Defendant also offered reasons why several of the loans did not close because of problems with the potential borrower. (Tr. April 2, 1987, p. 64-65, p. 55-56, p. 87, for examples).

A reasonable explanation was offered for all potential borrowers who did not receive their monies and the Government failed to introduce any testimony or document of a "smoking gun" nature wherein the defendant specifically recited any intent to defraud any of these individuals.

It is arguable under these conditions that the trial judge should not have allowed this case to go to the jury, although the jury, exercising their province as granted to them by the trial court, apparently chose to disbelieve the various explanations of the defendant.

II

DID THE TRIAL COURT, THROUGH ORDER OF THE MAGISTRATE, COMMIT REVERSIBLE ERROR BY DENYING DEFENDANT'S MOTION FOR BILL OF PARTICULARS?

The indictment alleges various counts of mail fraud in Counts 2 through 11. These counts were related to the general information introduced in Count 1. The trial in this matter commenced at least six years after many of the facts and dates alleged in the indictment. Defendant had no records of many of these transactions and had little if any recollection of some of them. The indictment failed to alleged the specific fraud or fraudulent scheme as it applied to each count, it simply stated a general count in Count 1 and then recited a series of mailings in each subsequent count. This is precisely the type of situation where a bill of particulars should be granted. The Government cannot escape providing particulars by stating that the particulars sought should be known to the defendant, since the defendant is presumed in-

nocent of the facts on which the indictment is based and, in any event, is seeking of prosecution's version of the crucial events and facts. *United States v. Smith,* 16 F.R.D. 372, 375 (W.D. Mo. 1954); *United States v. Thevis,* 575 F.Supp. 123 (N.D. Ga. 1979).

Rule 7(f), F.R.Cr.P., was amended in 1966 to eliminate the "cause" requirement. Where the interest of the defense and and the Government are closely balanced, the defendant should get the benefit of the doubt in the granting of these types of bills. *United States v. Manetti,* 323 F. Supp. 683, 697 (D.C. Del. 1971).

While the Government may contend that any of the gaps in the defendant's knowledge as to the specific nature of the charges against him were cured by providing all documents and exhibits the Government had in its possession pursuant to Rule 16, F.R.Cr.P., the threshhold test of whether or not a motion for a bill of particulars should have been granted is not made in hindsight. The test is whether or not it should have been granted based upon the available information available to the defendant and thereby to the court's review at the time the motion was made.

It is arguable that even though substantial compliance with Rule 16 requirements and other documents were later provided to the defendant, that this cannot change the impact of the failure of the magistrate to grant defendant's motion for a bill of particulars.

CONCLUSION

Undersigned counsel requests review of the issues raised by the honorable judges of this court to determine the validity of arguments raised. Although counsel does not assert a meritorious grounds for appeal, there were substantial questions raised on the various trial issues and valid explanations for alleged improper behavior were offered. It could be alleged, therefore, that the trial court should not have let the jury guess at these facts but should have directed a verdict for the defendant.

It could be further argued that the magistrate failed to grant the defendant's proper request for a motion for a bill of particulars when that motion was critical to the preparation of defendant's case.

Respectfully submitted,

John S. Crompton
JOHN S. CROMPTON, ESQUIRE
4105 North Himes Avenue
Tampa, Florida 33607
(813) 874-0437

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Warren Zimmerman, Esquire, Assistant United States Attorney, 500 Zack Street, Tampa, Florida 33602 this 12th day of October, 1987.

John S. Crompton
Attorney

APPENDIX D

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO. 87-3333

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
MICHAEL LEIGH,
Defendant-Appellant.

NOTICE OF APPEARANCE

Howard J. Shifke, Esquire, 701 N. Franklin Street, Tampa, Florida 33602, telephone (813) 224-0431, hereby files his appearance as attorney for the Defendant-Appellant, MICHAEL LEIGH, in the captioned matter.

Howard J. Shifke
HOWARD J. SHIFKE, ESQUIRE
701 N. Franklin Street
Tampa, Florida 33602
Phone: (813) 224-0431

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice of Appearance has been furnished to the Office of the United States Attorney, Appeals Division, 500 Zack Street, Tampa, Florida 33602, and to John Crompton, Esquire, 3224 Pleasant Lake Drive, Tampa, Florida 33618, by United States Mail, this 26th day of May, 1988.

Howard J. Shifke
HOWARD J. SHIFKE

APPENDIX E

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO. 87-3333

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
MICHAEL LEIGH,
Defendant-Appellant.

MOTION TO BRIEF APPEAL

COMES NOW the Appellant, MICHAEL LEIGH, by and through his undersigned legal counsel, and moves this Honorable Court to permit the Appellant to brief his appeal, and in support states as follows:

1. Appellant formerly had court-appointed counsel who filed an *Anders* brief.
2. Appellant would like to assign points of error and have such issues briefed and pursued through the appellate process.
3. Undersigned counsel is prepared to pursue Appellant's appeal in a professional and expeditious manner, and would request a briefing schedule in which to file Appellant's initial brief.

WHEREFORE, Appellant, MICHAEL LEIGH, respectfully requests this Court to permit the filing of Appellant's brief and order the Clerk of the Court to set a briefing schedule.

Respectfully submitted,

Howard J. Shifke
HOWARD J. SHIFKE, ESQUIRE
701 N. Franklin Street
Tampa, Florida 33602
Phone: (813) 224-0431

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been

furnished to the Office of the United States Attorney, Appeals Division, 500 Zack Street, Tampa, Florida 33602, and to John Crompton, Esquire, 3224 Pleasant Lake Drive, Tampa, Florida 33618, by United States Mail, this 26th day of May, 1988.

Howard J. Shifke
HOWARD J. SHIFKE

APPENDIX F

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO. 87-3333

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
C. MICHAEL LEIGH,
Defendant-Appellant.

MOTION TO REINSTATE APPEAL

COMES NOW the Appellant, C. MICHAEL LEIGH, by and through undersigned legal counsel, and moves this Honorable Court to reinstate his appeal, and in support states as follows:

1. Appellant was charged in a twelve count indictment and was convicted on ten counts.
2. The trial in this cause took nine days.
3. Appellant's court-appointed counsel filed an *Anders* brief in October of 1987.
4. Appellant wishes to pursue his appeal and his family has retained undersigned counsel.
5. Undersigned counsel filed a Notice of Appearance (Exhibit "A") and a Motion to Brief Appeal (Exhibit "B") on May 27, 1988.
6. On May 31, 1988, the Clerk of the Court informed undersigned counsel that Appellant's appeal had been dismissed.
7. Appellant would assert various issues on his appeal, which would include, but are not limited to:
   a. Challenging sufficiency of the evidence;

b. Challenging many evidentiary rulings that, if not reversible error themselves, deprived Appellant of a fair trial under the totality of the circumstances; and

c. Challenging his sentence.

8. Appellant would like his appeal to be pursued and vigorously advocated.

WHEREFORE, Appellant, C. MICHAEL LEIGH, respectfully requests this Court to reinstate his appeal.

Respectfully submitted,

Howard J. Shifke
HOWARD J. SHIFKE, ESQUIRE
701 N. Franklin Street
Tampa, Florida 33602
Phone: (813) 224-0431

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Appeals Division, Office of the United States Attorney, 500 Zack Street, Tampa, Florida 33602, by United States Mail, this 1st day of June, 1988.

Howard J. Shifke
HOWARD J. SHIFKE

EXHIBIT "A"

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO. 87-3333

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
MICHAEL LEIGH,
Defendant-Appellant.

NOTICE OF APPEARANCE

Howard J. Shifke, Esquire, 701 N. Franklin Street, Tampa, Florida 33602, telephone (813) 224-0431, hereby files his appearance as attorney for the Defendant-Appellant, MICHAEL LEIGH, in the captioned matter.

Howard J. Shifke
HOWARD J. SHIFKE, ESQUIRE
701 N. Franklin Street
Tampa, Florida 33602
Phone: (813) 224-0431

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice of Appearance has been furnished to the Office of the United States Attorney, Appeals Division, 500 Zack Street, Tampa, Florida 33602, and to John Crompton, Esquire, 3224 Pleasant Lake Drive, Tampa, Florida 33618, by United States Mail, this 26th day of May, 1988.

Howard J. Shifke
HOWARD J. SHIFKE

EXHIBIT "B"

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO. 87-3333

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
MICHAEL LEIGH,
Defendant-Appellant.

MOTION TO BRIEF APPEAL

COMES NOW the Appellant, MICHAEL LEIGH, by and through his undersigned legal counsel, and moves this Honorable Court to permit the Appellant to brief his appeal, and in support states as follows:

1. Appellant formerly had court-appointed counsel who filed an *Anders* brief.

2. Appellant would like to assign points of error and have such issues briefed and pursued through the appellate process.

3. Undersigned counsel is prepared to pursue Appellant's appeal in a professional and expeditious manner, and would request a briefing schedule in which to file Appellant's initial brief.

WHEREFORE, Appellant, MICHAEL LEIGH, respectfully requests this Court to permit the filing of Appellant's brief and order the Clerk of the Court to set a briefing schedule.

Respectfully submitted,

Howard J. Shifke
HOWARD J. SHIFKE, ESQUIRE
701 N. Franklin Street
Tampa, Florida 33602
Phone: (813) 224-0431

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Office of the United States Attorney, Appeals Division, 500 Zack Street, Tampa, Florida 33602, and to John Crompton, Esquire, 3224 Pleasant Lake Drive, Tampa, Florida 33618, by United States Mail, this 26th day of May, 1988.

Howard J. Shifke
HOWARD J. SHIFKE